

FILED

JUN 20 1994

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

ENVIRONMENTAL PROTECTION AGENCY
REGION IX
CLERK

In the matter of:) Docket No. EPCRA-09-94-0015
)
Catalina Yachts, Inc.) CIVIL COMPLAINT
) and
Respondent.) NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

This is a civil administrative action instituted under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq. (also known as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA")). The Administrator of the United States Environmental Protection Agency ("EPA") has delegated the authority to file this action under EPCRA to the Regional Administrator Region 9 by EPA Delegation Order Number 22-3, dated September 13, 1987. The Regional Administrator, Region IX has further delegated the authority to file this action under EPCRA to the Director of the Air and Toxics Division by EPA Regional Order Number R1290.61.

PRELIMINARY STATEMENT

1. Complainant is the Director, Air & Toxics Division, EPA Region IX. Respondent is Catalina Yachts, Inc. ("Respondent").

2. This Complaint serves as notice that Complainant has reason to believe that Respondent failed to submit timely, complete and correct Toxic Chemical Release Inventory Reporting Forms for calendar years 1988, 1989, 1990, 1991, and 1992 as required by

1 Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal
2 regulations promulgated to implement Section 313.

3 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C.
4 §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release
5 Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.
6 Subsection 313(a), as implemented by 40 C.F.R. § 372.30, provides
7 that an owner or operator of a facility subject to the requirements
8 of Subsection 313(b) and 40 C.F.R. § 372.22, is required to submit
9 annually, no later than July 1st of each year, a Toxic Chemical
10 Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter
11 "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65
12 that was manufactured, imported, processed or otherwise used during
13 the preceding calendar year in quantities exceeding the established
14 thresholds.

15 4. Completed and correct Forms R, as published under
16 Subsection 313(g), for each of calendar years 1988, 1989, 1990,
17 1991, and 1992, were required to have been submitted by Respondent
18 to the Administrator of EPA and to the State in which Respondent's
19 facility is located on or before July 1st of each succeeding year.
20 EPA deems a Form R to be submitted as of the date on which the Form
21 R is postmarked. EPCRA § 313(g)(1).

22 5. Respondent is a "person" as that term is defined by
23 Section 329(7) of EPCRA. [42 U.S.C. § 11049(7)].

24 6. On November 15, 1993, an authorized representative of
25 EPA inspected the Respondent's facility. The purpose of the
26 inspection was to determine compliance with the reporting
27 requirements set forth in Section 313 of EPCRA, 42 U.S.C. § 11023,

1 as implemented by 40 C.F.R. Part 372.

2 7. Respondent is an owner and operator of a "facility,"
3 as that term is defined by Section 329(4) of EPCRA, 42 U.S.C.
4 § 11049(4) and 40 C.F.R. § 372.3, which is located at 21200 Victory
5 Boulevard, Woodland Hills, CA 91364 (hereinafter "Facility").

6 8. The Facility has 10 or more "full-time employees," as
7 that term is defined at 40 C.F.R. § 372.3.

8 9. The Facility is classified in Standard Industrial
9 Classification Code 3732.

10 10. During calendar years 1988, 1989, 1990, 1991, and
11 1992, toxic chemicals at the Facility were "processed and otherwise
12 used," as defined in 40 C.F.R. § 372.3, in quantities exceeding the
13 established thresholds.

14 11. Subsection 313(b) of EPCRA and 40 C.F.R. § 372.22
15 require that an owner and operator of a facility subject to the
16 requirements of Subsection 313(b) and 40 C.F.R. § 372.22, that is a
17 facility that has 10 or more full-time employees, which is in
18 Standard Industrial Classification Codes 2000-3999, inclusive, and
19 which manufactures, processes, or otherwise uses one or more toxic
20 chemicals listed under Subsection 313(c) of EPCRA and 40 C.F.R.
21 § 372.65 in quantities in excess of the applicable thresholds
22 established under Subsection 313(f) and 40 C.F.R. § 372.25, must
23 submit a Form R for each such chemical for the applicable reporting
24 year. The requirements of EPCRA Section 313 [42 U.S.C. § 11023],
25 therefore, apply to the Facility.

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COUNT I

FAILURE TO REPORT ACETONE FOR 1988

12. Paragraphs 1 through 11 of this Complaint are hereby incorporated by reference and alleged as if set forth in full herein.

13. During calendar year 1988, Respondent otherwise used approximately 308,168 pounds of acetone, CAS Number 67-64-1, a chemical listed under 40 C.F.R. § 372.65. The quantity of acetone used at the Facility exceeds the established threshold of 10,000 pounds for 1988. 40 C.F.R. § 372.25(a). Respondent, therefore, was required to submit to the EPA Administrator and to the State of California, a Form R for acetone on or before July 1, 1989.

14. Respondent failed to submit a Form R to the EPA Administrator and to the State of California on or before July 1, 1989.

15. Respondent's failure to submit a Form R as alleged was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

16. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)] provides that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 per day for each such violation.

COUNT II

FAILURE TO REPORT ACETONE FOR 1989

17. Paragraphs 1 through 11 of this Complaint are hereby incorporated by reference and alleged as if set forth in full herein.

18. During calendar year 1989, Respondent otherwise used

1 approximately 101,655 pounds of acetone, CAS Number 67-64-1, a
2 chemical listed under 40 C.F.R. § 372.65. The quantity of acetone
3 used at the Facility exceeds the established threshold of 10,000
4 pounds for 1989. 40 C.F.R. § 372.25(a). Respondent, therefore,
5 was required to submit to the EPA Administrator and to the State of
6 California, a Form R for acetone on or before July 1, 1990.

7 19. Respondent failed to submit a Form R to the EPA
8 Administrator and to the State of California on or before
9 July 1, 1990.

10 20. Respondent's failure to submit a Form R as alleged
11 was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40
12 C.F.R. Part 372.

13 21. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)]
14 provides that any person who violates any requirement of Section
15 313 shall be liable to the United States for a civil penalty in an
16 amount not to exceed \$25,000 per day for each such violation.

17 Count III

18 FAILURE TO REPORT STYRENE FOR 1988

19 22. Paragraphs 1 through 11 of this Complaint are hereby
20 incorporated by reference and alleged as if set forth in full
21 herein.

22 23. During calendar year 1988, Respondent processed
23 approximately 1,784,078 pounds of styrene, CAS Number 100-42-5, a
24 chemical listed under 40 C.F.R. § 372.65. The quantity of styrene
25 at the Facility exceeds the established threshold of 50,000 pounds
26 for 1988. 40 C.F.R. § 372.25(a). Respondent, therefore, was
27 required to submit to the EPA Administrator and to the State of
28

1 California, a Form R for styrene on or before July 1, 1989.

2 24. Respondent failed to submit a Form R to the EPA
3 Administrator and to the State of California on or before
4 July 1, 1989.

5 25. Respondent's failure to submit a Form R as alleged
6 was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

7 26. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)]
8 provides that any person who violates any requirement of Section
9 313 shall be liable to the United States for a civil penalty in an
10 amount not to exceed \$25,000 per day for each such violation.

11 COUNT IV

12 FAILURE TO REPORT STYRENE FOR 1989

13 27. Paragraphs 1 through 11 of this Complaint are hereby
14 incorporated by reference and alleged as if set forth in full
15 herein.

16 28. During calendar year 1989, Respondent processed
17 approximately 2,691,348 pounds of styrene, CAS Number 100-42-5, a
18 chemical listed under 40 C.F.R. § 372.65. The quantity of styrene
19 at the Facility exceeds the established threshold of 25,000 pounds
20 for 1989. 40 C.F.R. § 372.25(a). Respondent, therefore, was
21 required to submit to the EPA Administrator and to the State of
22 California, a Form R for styrene on or before July 1, 1990.

23 29. Respondent failed to submit a Form R to the EPA
24 Administrator and to the State of California on or before
25 July 1, 1990.

26 30. Respondent's failure to submit a Form R as alleged
27 was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

1 31. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)]
2 provides that any person who violates any requirement of Section
3 313 shall be liable to the United States for a civil penalty in an
4 amount not to exceed \$25,000 per day for each such violation.

5 COUNT V

6 FAILURE TO REPORT STYRENE FOR 1990

7 32. Paragraphs 1 through 11 of this Complaint are hereby
8 incorporated by reference and alleged as if set forth in full
9 herein.

10 33. During calendar year 1990, Respondent processed
11 approximately 898,416 pounds of styrene, CAS Number 100-42-5, a
12 chemical listed under 40 C.F.R. § 372.65. The quantity of styrene
13 at the Facility exceeds the established threshold of 25,000 pounds
14 for 1990. 40 C.F.R. § 372.25(a). Respondent, therefore, was
15 required to submit to the EPA Administrator and to the State of
16 California, a Form R for styrene on or before July 1, 1991.

17 34. Respondent failed to submit a Form R to the EPA
18 Administrator and to the State of California on or before
19 July 1, 1991.

20 35. Respondent's failure to submit a Form R as alleged
21 was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

22 36. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)]
23 provides that any person who violates any requirement of Section
24 313 shall be liable to the United States for a civil penalty in an
25 amount not to exceed \$25,000 per day for each such violation.

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COUNT VI

FAILURE TO REPORT STYRENE FOR 1991

37. Paragraphs 1 through 11 of this Complaint are hereby incorporated by reference and alleged as if set forth in full herein.

38. During calendar year 1991, Respondent processed approximately 624,441 pounds of styrene, CAS Number 100-42-5, a chemical listed under 40 C.F.R. § 372.65. The quantity of styrene at the Facility exceeds the established threshold of 25,000 pounds for 1991. 40 C.F.R. § 372.25(a). Respondent, therefore, was required to submit to the EPA Administrator and to the State of California, a Form R for styrene on or before July 1, 1992.

39. Respondent failed to submit a Form R to the EPA Administrator and to the State of California on or before July 1, 1992.

40. Respondent's failure to submit a Form R as alleged was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

41. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)] provides that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 per day for each such violation.

COUNT VII

FAILURE TO REPORT STYRENE FOR 1992

42. Paragraphs 1 through 11 of this Complaint are hereby incorporated by reference and alleged as if set forth in full herein.

43. During calendar year 1992, Respondent processed

1 approximately 660,798 pounds of styrene, CAS Number 100-42-5, a
2 chemical listed under 40 C.F.R. § 372.65. The quantity of styrene
3 at the Facility exceeds the established threshold of 25,000 pounds
4 for 1992. 40 C.F.R. § 372.25(a). Respondent, therefore, was
5 required to submit to the EPA Administrator and to the State of
6 California, a Form R for styrene on or before July 1, 1993.

7 44. Respondent failed to submit a Form R to the EPA
8 Administrator and to the State of California on or before
9 July 1, 1993.

10 45. Respondent's failure to submit a Form R as alleged
11 was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

12 46. Section 325(c) of EPCRA [42 U.S.C. § 11045(c)]
13 provides that any person who violates any requirement of Section
14 313 shall be liable to the United States for a civil penalty in an
15 amount not to exceed \$25,000 per day for each such violation.

16 PROPOSED CIVIL PENALTY

17 Section 325(c) of EPCRA, 42 U.S.C. Section 11045(c),
18 authorizes EPA to assess a civil penalty of up to \$25,000 per day
19 for each violation of Section 313. Based on the violations cited
20 in this Complaint, and on the nature, circumstances, extent and
21 gravity of the violations alleged, and the degree of culpability,
22 as set forth in the Enforcement Response Policy, dated August 10,
23 1992, for Section 313 of the Emergency Planning and Community
24 Right-to-Know Act, EPA proposes that Respondent be assessed the
25 following civil penalty for the violations alleged in this
26 Complaint:

27 ///

COUNT I

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Acetone, CAS Number 67-64-1, for calendar year
1988: Circumstance Level 1, Extent Level A. \$25,000

COUNT II

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Acetone, CAS Number 67-64-1, for calendar year
1989: Circumstance Level 1, Extent Level A. \$25,000

COUNT III

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Styrene, CAS Number 100-42-5, for calendar year
1988: Circumstance Level 1, Extent Level A. \$25,000

COUNT IV

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Styrene, CAS Number 100-42-5, for calendar year
1989: Circumstance Level 1, Extent Level A. \$25,000

COUNT V

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Styrene, CAS Number 100-42-5, for calendar year
1990: Circumstance Level 1, Extent Level A. \$25,000

COUNT VI

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Styrene, CAS Number 100-42-5, for calendar year
1991: Circumstance Level 1, Extent Level A. \$25,000

COUNT VII

Failure to submit a Form R (Toxic Chemical Release Inventory
Reporting Form) for Styrene, CAS Number 100-42-5, for calendar year

1 1992: Circumstance Level 1, Extent Level A. \$25,000

2
3 TOTAL PROPOSED CIVIL PENALTY \$175,000

4
5 **NOTICE OF OPPORTUNITY TO**
6 **REQUEST A HEARING**

7 The Consolidated Rules of Practice Governing the
8 Administrative Assessment of Civil Penalties and the Revocation or
9 Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22,
10 govern the procedures of the hearing. A copy of the Consolidated
11 Rules accompanies this Complaint. Under these rules you have the
12 right to request a formal hearing to contest any material fact set
13 forth in this Complaint or to contest the appropriateness of the
14 proposed penalty. To avoid being found in default, which
15 constitutes an admission of all facts alleged in the Complaint and
16 a waiver of the right to a hearing, and having the above-cited
17 penalty assessed without further proceedings, you must file a
18 written Answer within twenty (20) days of your receipt of this
19 Complaint. First, your Answer must clearly and directly admit,
20 deny or explain each of the factual allegations contained in this
21 Complaint with regard to which you have any knowledge or
22 information. If you have no knowledge or information of a
23 particular fact, you must so state and the allegation is considered
24 denied. If your Answer fails to deny any allegation, it will
25 constitute an admission. Second, your Answer must also briefly
26 state all facts and circumstances, if any, which constitute grounds
27 for a defense. Third, your Answer must specifically request an

1 administrative hearing (if desired), however, if you deny any
2 material fact or raise any affirmative defense, you will be
3 considered to have requested a hearing.

4 Your Answer must be sent to:

5 Regional Hearing Clerk
6 United States Environmental Protection Agency
7 Region IX, RC-1
8 75 Hawthorne Street
9 San Francisco, CA 94105

8 Please send a copy of your Answer and all other documents which you
9 file in this action to David M. Jones, the attorney assigned to
10 represent EPA in this matter, at:

11 David M. Jones, Esquire
12 Office of Regional Counsel, RC-2-1
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

16 (415) 744-1314

17 INFORMAL SETTLEMENT CONFERENCE

16 Even if you choose not to request a hearing, you may confer
17 informally with the attorney assigned to represent EPA in this
18 matter, David M. Jones, to discuss the facts of this case, the
19 amount of the proposed civil penalty, or the possibility of
20 settlement. An informal settlement conference does not, however,
21 affect your obligation to file a written Answer to the Complaint
22 within twenty (20) days after receiving this Complaint. EPA has
23 the authority to modify the amount of the proposed penalty, where
24 appropriate, to reflect any settlement reached with you in an
25 informal conference. The terms of such an agreement would be
26 embodied in a Consent Agreement and Final Order. A Consent
27 Agreement signed by EPA and yourself would be binding as to all

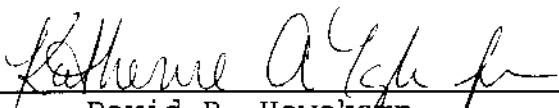
1 terms and conditions specified therein upon signature by the EPA
2 Regional Administrator.

3 Please be advised that the Consolidated Rules prohibit any ex-
4 parte (unilateral) discussion of the merits of any action with the
5 Regional Administrator, Chief Judicial Officer, Administrative Law
6 Judge, or any person likely to advise these officials in the
7 decision of the case, after the Complaint is issued. Please also
8 be reminded that failure to file an Answer or respond to this civil
9 complaint may result in a default order being issued for collection
10 of the full civil penalty.

11
12 UNITED STATES

13
14 ENVIRONMENTAL PROTECTION AGENCY,

15
16 Complainant

17 
18 David P. Howekamp
19 Director, Air and Toxics Division
20 Region IX

21 Date: 6/17/94

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CERTIFICATE OF SERVICE

I certify that the original and one copy of the Complaint was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Complaint along with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and the Toxic Chemical Release Inventory Reporting Enforcement Response Policy, was sent to Respondent at the following address:

Mr. Frank W. Butler
President
Catalina Yachts, Inc.
21200 Victory Boulevard
Woodland Hills, CA 91364

Dated: JUN 17 1994

Certified Mail No:

P 243 067 056

Mary Johnson
Mary Johnson
Pesticides and Toxics Branch
Air and Toxics Division
United States Environmental
Protection Agency, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 17 1994

Certified Mail No. P 243 067 056
Return Receipt Requested

In Reply: ORC
Refer to: EPCRA-09-94-0015

Mr. Frank W. Butler
President
Catalina Yachts, Inc.
21200 Victory Boulevard
Woodland Hills, CA 91364

Re: Catalina Yachts, Inc., Woodland Hills, CA
Complaint and Notice of Opportunity for Hearing
Docket No. EPCRA-09-94-0015

Dear Mr. Butler:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 USC Section 11001 et seq.

The Complaint and Rules of Practice, 40 C.F.R. Part 22, set forth the alternatives available to you in responding to the alleged facts, violations, proposed penalty, and opportunity for a hearing. It should be emphasized that, if you wish to request a hearing and avoid being found in default, you must file a written Answer within twenty (20) days of your receipt of the Complaint.

Whether or not you choose to request a hearing, you are encouraged to explore the possibility of settlement by contacting David M. Jones, Office of Regional Counsel, U. S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105; telephone number 415-744-1314.

Sincerely,

David F. Howekamp
Director
Air & Toxics Division

Enclosure

Steve Armsey

CIVIL COMPLAINT

NAME OF RESPONDENT: FRANK W. BUTLER
TITLE: PRESIDENT
COMPANY NAME: CATALINA YACHTA, INC.
ADDRESS: 21200 VICTORY BLVD.
CITY, STATE AND ZIP: WOODLAND HILLS, CA 91364

DISTRIBUTION:

SEND TO RESPONDENT:

____ ORIGINAL LETTER
____ COPY OF CIVIL COMPLAINT
____ COPY OF CERT. OF SERVICE
____ COPY OF FED RULES, CFR 40
____ COPY OF ENFORC. RESP. POLICY
____ SEND CERTIFIED MAIL

SEND TO REGIONAL HEARING CLERK:

STEVE ARMSEY (RC-3)

✓ ORIGINAL CIVIL COMPLAINT
✓ ORIGINAL CERT. OF SERVICE
✓ COPY OF LETTER

SEND TO CASE LAWYER:

DAVID JONES

____ COPY OF LETTER
____ COPY OF CIVIL COMPLAINT
____ COPY OF CERT. OF SERVICE

SEND TO PRESS OFFICER:

BILL GLENN R-2

____ COPY OF EVERYTHING

CORRESPONDENCE FILE:

____ COPY OF EVERYTHING

DATE STAMPED DATE:

6/17/94

INITIAL:

mej